IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.23966 of 2006
and
MP No.1 of 2006

R.Dhanaraj .. Petitioner

vs

1.Tahsildar
Jayankondam
Perambalur District
2.Chandrahasan (died)
3.Govindaraju
4.C.Rajamani Ammal
5.C.Painthamizh Pavai
6.C.Rajendra Chozhan
7.C.Pandian
(RR4 to 7 are impleaded as LRs of R2 as per order of the Court in MP No.1/2007 dated 19-9-2007) .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the notice dated 25.5.2006 in T.K.No.4897/2006 on the file of the first respondent herein and to quash the same and to direct the first respondent to effect necessary sub division in respect of the lands bearing Survey No.81/15, 81/19 and 74/16 in Angarayanallur Village, Udayarpalayam Taluk, Perambalur District, and effect appropriate patta within a time frame.

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For Petitioner : Mr.S.Subbiah
For Respondents : Mr.V.Arun
Additional Government Pleader for R1

Mr.J.Ramakrishnan
for RR4 to 7

Mr.R.Muthulingam for R3

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ORDER

Aggrieved over the rejection of an application for sub division of an immovable property and grant of patta pursuant to a decree passed by a Civil Court, the petitioner has challenged the order of the first respondent Tahsildar.

2.The Court heard the learned Counsel for the petitioner, the learned Additional Government Pleader for the first respondent and also the learned Counsel for the respondents 2 to 7.

3.The petitioner filed a suit in O.S.No.116 of 1978 on the file of the District Munsif, Ariyalur, seeking for the relief of partition in respect of the landed property in Survey No.80/3, 81/15, 81/19 and 74/16 in Angarayanallur Village, Udayarpalayam Taluk. The preliminary decree granted in favour of the petitioner, was challenged by the second defendant therein in A.S.No.180/80. But, the same was dismissed. Following the preliminary decree, final decree came to be passed. Then, the petitioner laid E.P.No.174 of 2000 on the file of the District Munsif, Jayankondam, and the properties were delivered to the petitioner through Court on 11.3.2003. The same was also recorded. While the matter stood thus, the petitioner filed an application before the first respondent Tahsildar for making subdivision of the property and granting patta. The first respondent dismissed the application on two grounds that there was an objection raised by the respondents 2 and 3, and also there is some difference noticed in the plans furnished by the parties, and hence, a subdivision could not be effected. In such circumstances, the writ petition has been brought forth by the petitioner before this Court.

4.The learned Counsel for the petitioner would submit that pursuant to the decree of the Civil Court and delivery of the property to the petitioner, he sought the subdivision and also patta; that under the circumstances, the first respondent should have ordered for subdivision and also granted patta, but not done so, and hence, necessary direction has got to be issued.

5.The learned Additional Government Pleader for the first respondent would submit that if there was an order of rejection of an application seeking for subdivision and patta, an appeal remedy is available before the R.D.O.; and that under the circumstances, he should have preferred an appeal and should not have filed a writ petition like this.

6.The learned Counsel for the respondents 2 to 7 would submit that they have raised necessary objections before the Tahsildar; that only on the tenable objections, the application for subdivision and grant of patta was rightly rejected, and hence, that order has got to be sustained.

7.The Court paid its anxious consideration on the submissions made. In a case like this, when a Civil Court has passed a decree in favour of the petitioner and has delivered the property pursuant thereto, there cannot be any impediment for the Tahsildar, the first respondent herein, to make a subdivision or grant patta. Now, the reason adduced by the Tahsildar was that the objections were raised by the respondents 2 and 3. It is pertinent to point out that they were the contesting defendants, who

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failed even in their appeal. At that time, it is not for the first respondent to reiterate the very same defence what was taken in the suit by the defendants therein to defeat the rights of a party which was originally declared by a Court of civil law. Under the circumstances, the Tahsildar has failed in his duty. It also remains to be stated that when the matter was pending before the Tahsildar, a representation was made before the R.D.O., and the R.D.O. in turn has sent the same to the Tahsildar, the first respondent, to consider the same and pass suitable orders. But, the Tahsildar has dismissed the application; probably, the representation made by the petitioner to the R.D.O., would have been the reason for rejection of the request of the petitioner in the opinion of this Court. Under such circumstances, the order of the Tahsildar is set aside, and the matter is remitted to the first respondent Tahsildar to effect the subdivision and also grant patta as per the orders of the Civil Court in the decree passed referred to above, as expeditiously as practicable preferably within a period of eight weeks herefrom. Accordingly, this writ petition is allowed. No costs. Consequently, connected MP is closed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
The Tahsildar
Jayankondam
Perambalur District

+1 cc to Mr.s.Subbiah, Advocate Sr.No.58744.

+1 cc to The Government Pleader Sr.No.58578.

+1 cc to Mr.J.Ramakrishnan, Advocate Sr.No.58627.

JRG(CO)
dcp/9.10

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